

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HERBERT AND E. CHRISTENSEN)

For Appellants: Herbert Christensen,
in pro. per.

For Respondent: Charlotte Meisel
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Herbert and E. Christensen against a proposed assessment of additional personal income tax in the amount of \$2,738.36 for the year 1977.

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The sole issue is whether one hundred percent of appellants' capital gain from the sale of unimproved real property held for **less** than one year should be taken **into account** in computing taxable income.

Appellants' timely-filed personal income tax return for 1977 indicated a gain of \$49,886 from the sale of unimproved real property. That return showed that appellants had purchased the subject property on July 21, 1976, and had sold it on May 1, 1977, which indicated a holding period of nine months **and nine** days. In the return for that year, appellants included fifty percent of the gain in computing their taxable income.

Based upon the information submitted in the return, specifically the above-noted holding period, respondent determined that one hundred percent, rather than fifty percent, of the gain should be included in taxable income, and, accordingly, issued a proposed assessment which increased **appellants'** 1977 taxable **income** by \$24,943. Appellants protested the assessment, and respondent's denial of that protest **led** to this **t i m e l y** **appeal**.

Revenue and Taxation Code section 18162.5, as in effect in the year at issue, provided as follows:

(a) In the case of any taxpayer, only the following percentages of the gain or loss recognized upon the sale or exchange of a capital asset shall be taken into account in computing taxable income:

(1) One hundred percent if the capital asset has been held for not more than one year;

(2) Sixty-five percent if the capital asset has been held for more than one **year** but not more than five years;

(3) Fifty percent if the capital asset has been held more than five years.

(b) This section shall apply with respect to taxable years beginning after December 31, 1971.

The information submitted by appellants clearly shows that the subject real property was held for a period of not more than one year. Appellants do

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not dispute the accuracy of that information. Instead, appellants contend that they intended to qualify for the more favorable tax treatment and, had they known the law, they would have complied with it. Unfortunately for appellants, this argument cannot **prevail against** the explicit requirements of section 18162.5. Therefore, pursuant to Revenue and Taxation Code section 18162.5, subsection (a)(1), one hundred percent of the gain on the **sale must** be taken into account in computing taxable income, and, accordingly, we must sustain respondent's action.

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- O R D E R

Pursuant to **the views** expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise-Tax Board on the protest of Herbert and E. Christensen against a proposed assessment of additional personal income tax in the amount of **\$2,738.36** for the year 1977, be and the same **is** hereby sustained.

Done at Sacramento, California, this 5th day of April , 1983, by the State Board of **Equalization**, with Board Members Mr. **Bennett**, Mr. Collis, Mr. Dronenburg, Mr. **Nevins** and Mr. **Harvey** p r e s e n t .

William M. Bennett , Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins , Member

Walter Harvey* , Member

*For Kenneth Cory, per Government Code Section 7.9